IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.Rev.Pet.No. 636 of 2004(D)

CRA.236/2001 of ADDL. SESSIONS COURT, ALAPPUZHA DT.1.4.2002
CC.792/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

REVN. PETITIONER: DE-FACTO COMPLAINANT

C.K.LAKSHMANAN, S/O. KRISHNAN,
AGED 59 YEARS, RESIDING AT PUTHENPURAYIL,
ERAMALLOOR P.O., CHERTHALA TALUK,
ALLEPPEY DISTRICT, PIN 688 537

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS: APPELLANTS AND RESPONDENT/ACCUSED AND STATE

1. **UTHAMAN, S/O. KRISHNAN, PUTHUVAL**
   NIKARTHIL HOUSE, WARD NO.8, EZHUPUNNA PANCHAYAT,
   ERAMALLOOR P.O., ALLEPPEY DISTRICT

2. **KARTHIKEYAN S/O. KRISHNAN, PUTHUVAL**
   NIKARTHIL HOUSE, WARD NO.8, EZHUPUNNA PANCHAYAT,
   ERAMALLOR P.O., ALLEPPEY DISTRICT.

3. **PAVITHRAN S/O. KRISHNAN, PUTHUVAL**
   NIKARTHIL HOUSE, WARD NO.8, EZHUPUNNA PANCHAYAT,
   ERAMALLOOR P.O., ALLEPPEY DISTRICT.

4. **STATE OF KERALA, REPRESENTED BY THE**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   COCHIN 682 031

BY PUBLIC PROSECUTOR
SRI.SHAIJAN C.GEORGE
SRI.JOHN VIPIN
SRI.P.V.SURENDRANATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON 26/06/2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.636 OF 2004-D

DATED THIS THE 26TH JUNE 2007

ORDER

The revision petitioner is the de facto complainant in C.C.No.792/1997 with respect to the offence under Sections 324, 326 read with Section 34 IPC. The trial court convicted the accused and sentenced to undergo simple imprisonment for six months each, for the offence under Section 324 and to undergo simple imprisonment for one year each for the offence under Section 326 IPC with the direction that both the sentences shall run concurrently. The appellate court found that in fact the de facto complainant and his sons are the aggressors and that the accused had also sustained injuries in the incident and hence the prosecution version as to the incident cannot be trusted and that the accused is entitled for an acquittal. It was also noted that there was a counter case which also ended up in acquittal.

2. The prosecution version is that on 8-3-1997 at about 12.30 p.m. in the noon the accused on account of previous

enmity towards PW1 attacked the de facto complainant and his two sons who are CWs.2 and 3 and that the 3rd accused inflicted a blow on PW1 with a chopper on the left palm that resulted in fracture of ring finger and little finger of the left hand and he also beat PW1 with an iron rod on different parts of his body and the 2nd accused beat PW1 with a stick and the 3rd accused inflicted blows on Pw2 that resulted in the fracture of right thump and the 3rd accused also inflicted blow with the chopper on PW3 on his left thigh and the 2nd accused hit PW3 on the head and right shoulder with a stick and on the left hand with a stick, in front of the house of PW1. The evidence adduced in the matter consisted of the testimony of PWs.1 to 10, Exts.P1 to P11 and Mos.1 and 2, iron pipe and chopper. The defence examined DW.1, who is PW10, the Sub Inspector/investigating officer and got marked Ext.D1 and D2, F.I.R. and the final report in the counter case. It is the defence version that while the 2nd accused was passing through the bye lane in front of the house of PW1, CWs.1 to 3 obstructed him and hit him with an iron rod and inflicted blows a billhook. The bicycle was

destroyed. On hearing the cries of A2, A1 and A3 intervened and they were also manhandled by Pws.1 to 3.

3. The evidence as to the incident consisted of the testimony of Pws.1,2 and 5 who are CWs.1 to 3, the father and sons as well as the evidence of Pws.3 and 7. Pw3 turned hostile. Pw7 is a relative of the injured. It was also brought out in evidence that the accused and Pws.1,2 and 5 are on inimical terms since long. With respect to the same incident, C.C.No.585/97 registered on the complaint of the accused was tried and the matter ended in acquittal. The appellate court has mainly relied on the evidence of Pw10, the investigating officer who was examined as DW1 as well. Pw10 has admitted that it was Pw1 who was armed with sickle, who attacked A1 at first. It is also brought out that PW5 has also beaten A1 with an iron rod and PW2 had beaten A3 with an iron rod and Pw1 had inflicted cut injury on A3 by inflicting a blow with a billhook. PW5 had also beaten A3 with an iron rod and PW1 attempted to inflict blows on A3 . It was also brought out that Pw7, the occurrence witness had stated to PW10 that Pw1 had inflicted a cut injury

with a billhook and PW2 had also beaten A2 with an iron rod and that on seeing the people gathering PWs.1,2 and 5 left the scene of occurrence after damaging the bicycle of A2. Of course, Pw7 had denied the above statement of Pw10. It was also brought out from the evidence of PW10 that A2 was not at all armed at the time. Of course, Pws.1 and 2 sustained grievous injuries. In the circumstances and in the light of the evidence it appeared that the prosecution version as such cannot be believed. Hence, the appellate court found that it cannot be concluded that the accused is guilty of the offence alleged.

I find that the decision of the appellate court is supported by proper reasons. It appears that the accused is entitled to benefit of doubt. Moreover in a case of acquittal, interference in exercise of the revisional jurisdiction can only be an exceptional cases. I find that the instant case is not of such a nature. In the circumstances, the Crl.revision petition is dismissed.

Sd/-

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.636 of 2004-D

ORDER

26-6--2007